

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
February 27, 2008 Session

STATE OF TENNESSEE v. MITCHELL EADS

**Direct Appeal from the Criminal Court for Claiborne County
No. 12015 E. Shayne Sexton, Judge**

No. E2006-02792-CCA-R3-CD - Filed May 22, 2008

The defendant, Mitchell Eads, was convicted by a Claiborne County jury of felony escape, a Class E Felony, for escaping from the Claiborne County Jail and was sentenced by the trial court as a career offender to six years in the Department of Correction. Pursuant to the escape statute, the trial court ordered that the sentence be served consecutively to the effective twenty-four-year sentence the defendant received in case number 11969 for the felony charges for which he was being held at the time of his escape. On appeal, the defendant argues that the evidence was insufficient to sustain his conviction, a fatal variance existed between the indictment and the proof presented at trial, the trial court improperly excluded testimony from two correctional officers about the defendant's permission to leave the jail, and the trial court erred in ordering that the six-year escape sentence be served consecutively to the sentence in case number 11969. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Wesley D. Stone, Franklin, Tennessee, for the appellant, Mitchell Eads.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; William Paul Phillips, District Attorney General; and Amanda Cox, Howard R. Ellis, and Jared R. Effler, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

In December 2001, the defendant was being held on felony charges at the Claiborne County Jail, where he had obtained "inmate worker status." On the evening of December 16, 2001, he failed to return to the jail after helping a fellow inmate worker carry trash out of the facility. He was

apprehended on January 31, 2002, and subsequently indicted for escape from a penal institution, in violation of Tennessee Code Annotated section 39-16-605.

Trial was held on April 24, 2003. Shawn Goode, a certified correctional officer who was working at the jail as a part-time uncertified officer in December 2001, identified the defendant as an inmate who was housed at the jail on December 16, 2001. He testified that the defendant had achieved "inmate worker" or trustee status, a special work status granted to some inmates that gave them more freedom of movement about the jail. The defendant was the upstairs inmate worker, assigned to kitchen duties, while Inmate Donovan Washington was the downstairs inmate worker, assigned to clean the courtroom and the sheriff's department. Washington usually carried out the trash alone but, on that night, asked Officer Goode if the defendant could help him because of the large amount of accumulated trash. Officer Goode said that he did not give the men permission to carry the trash out together but that he opened the door for them.

Officer Goode testified that Washington returned from taking out the trash, but the defendant did not. He said he first noticed that the defendant was missing when he placed the inmates who had just completed their telephone arraignments with the general sessions judge back in their bullpens. He stated that he did not give the defendant permission to leave the courthouse premises. On cross-examination, he testified that he opened the door for the defendant and Washington at the instruction of his immediate supervisor, Kathy Raines. He further testified that he had never had any trouble with the defendant prior to December 16, 2001.

Cumberland Gap Police Officer David Honeycutt, previously employed by the Claiborne County Sheriff's Department, testified that on September 18, 2001, he arrested the defendant for a felony and transported him to the Claiborne County Jail. On January 31, 2002, he was called to a location on Needham Hollow Road in Claiborne County where other officers had apprehended and arrested the defendant for felony escape. On cross-examination, he acknowledged that his September 18 arrest of the defendant was without a warrant.

Sergeant Michael Gray of the Claiborne County Sheriff's Department testified that he and Sergeant Steve Cline arrested the defendant for felony escape on January 31, 2002, at a cabin off Needham Hollow Road in Claiborne County. He said the defendant was asleep on the screened porch when they arrived and, upon being awakened, asked, "How did you know where I was at?" Sergeant Steve Cline corroborated Sergeant Gray's account of the January 31, 2002, arrest, testifying that they had a warrant on the defendant for felony escape and that when awakened the defendant inquired how the officers had known where to find him.

Correctional Officer Kathy Raines of the Claiborne County Sheriff's Department, called as a witness for the defense, testified that the jail administrator had given the defendant the status of in-house trustee, which meant that he was supposed to work only inside the jail. She stated that on December 16, 2001, the defendant was allowed to carry the trash out to the dumpster after asking Officer Goode for permission to do so. She did not recall whether there was a notice on the bulletin board at the time stating that the defendant was to be allowed outside the jail only when accompanied by Burton Long. On cross-examination, she testified that she did not give the defendant permission to leave the jail. Instead, Officer Goode asked her if the defendant could go

downstairs to take the trash out and she responded that the correctional officer with whom she previously worked had been allowing him to do so.

Jail Correctional Officer Pauline Langley testified that the defendant had been given trustee status by Betsy Shoffner, the jail administrator. She said that there was a sign on the bulletin board over the guard's desk, signed by Shoffner, which stated that the defendant was to be allowed outside only in the company of Burton Long.

Following deliberations, the jury convicted the defendant of felony escape and the trial court subsequently sentenced him as a career offender to six years in the Department of Correction. Pursuant to the escape statute, the court ordered that the sentence be served consecutively to the effective twenty-four-year sentence the defendant received in case number 11969, which related to the felony charges for which the defendant was jailed at the time of his escape.

ANALYSIS

I. Sufficiency of the Evidence

As his first issue, the defendant challenges the sufficiency of the evidence in support of his conviction. Specifically, he contends that the evidence was insufficient because: (1) he had permission to leave the jail; (2) the State failed to prove that he was lawfully arrested; and (3) the State failed to prove that he was not entrapped into committing the crime by the correctional officers who gave him permission to leave and opened the door for him.

When considering a challenge to the sufficiency of the evidence we must consider “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); see also Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In

the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)). A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal, a convicted defendant has the burden of demonstrating that the evidence is insufficient. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

At the time of the defendant's offense, Tennessee's escape statute provided in pertinent part:

(a) It is unlawful for any person arrested for, charged with, or convicted of an offense to escape from a penal institution, as defined in § 39-16-601.

(b) A violation of this section is:

(1) A Class A misdemeanor if the person was being held for a misdemeanor;
and

(2) A Class E felony if the person was being held for a felony.

Tenn. Code Ann. § 39-16-605(a), (b) (1997). Section 39-16-601 reads in pertinent part:

As used in this part, unless the context otherwise requires:

....

(2) "Custody" means under arrest by a law enforcement officer or under restraint by a public servant pursuant to an order of a court;

(3) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole; and

(4) "Penal institution" includes any institution or facility used to house or detain a person:

(A) Convicted of a crime;

(B) Adjudicated delinquent by a juvenile court; or

(C) Who is in direct or indirect custody after a lawful arrest.

Tenn. Code Ann. § 39-16-601.

The defendant first argues that his departure from custody was authorized by the correctional officers who opened the door and allowed him to carry out the trash. He asserts that the State obviously relied on his allegedly unauthorized departure from the jail and not his failure to return as its theory of the offense because the indictment listed the offense date as December 16, 2001; the State alleged that the offense occurred on December 16, 2001, at 7:35 p.m. in its request for notice of alibi; and the prosecutor informed the trial court at sentencing that the offense occurred on December 16, 2001. The State argues that the defendant's permission to carry out the trash did not authorize him to leave the premises of the jail or to remain gone longer than the time required to complete his task. We agree with the State.

Contrary to the defendant's assertion, the State argued at trial, as it does on appeal, that the defendant committed the offense of escape by failing to return to the jail with Inmate Washington after carrying out the trash. The indictment charged the defendant with having escaped from the Claiborne County Workhouse on December 16, 2001, in violation of the escape statute. Viewed in the light most favorable to the State, the evidence established that the defendant, who was given either tacit or express permission to assist Inmate Washington in carrying trash out of the jail on the evening of December 16, 2001, failed to return upon completion of the task, instead departing from the premises and remaining at large until he was apprehended at a cabin on Needham Hollow Road over a month later. This proof was more than sufficient to sustain the defendant's conviction for escape.

The defendant next argues that the State failed to prove beyond a reasonable doubt that he was in custody after a lawful arrest. He asserts that the State failed to present proof to rebut the "presumptively unreasonable" nature of his September 18, 2001, warrantless arrest. In response, the State asserts that "the defendant failed to allege, much less prove, that his confinement was anything less than lawful," and cites State v. Marty Miller, No. 03C01-9602-CC-00056, 1997 WL 90638, at *3 (Tenn. Crim. App. Mar. 4, 1997), for the proposition that the invalidity of a defendant's arrest is not a defense to the offense of escape. We, again, agree with the State.

The defendant in Marty Miller, who was awaiting a hearing on a probation violation warrant when he escaped from the Monroe County Courthouse, argued that he was not guilty of felony escape because the probation violation warrant that resulted in his being in custody at the time of his escape was invalid. Id. at *1-2. We rejected his claim, writing:

The validity of a warrant or an arrest should not be considered a defense to a charge for escape. Once a defendant is held in custody of any type by anyone vested with the lawful authority to do so, escape is not a lawful option. The proper forum to assert defenses of any kind is before the trial court. Here, the Defendant could always have presented the defense that the issuance of the warrant exceeded the statute of limitation. Yet, he chose to escape while *waiting at the courthouse* for a hearing before the trial judge. If the validity of the probation violation warrant was indeed a valid defense, the trial court could have remedied the situation by dismissing the warrant.

Id. at *3 (footnote omitted) (emphasis in original). In this case, the State presented evidence that an officer of the Claiborne County Sheriff's Department arrested the defendant on felony charges on September 18, 2001, and transported him to the county jail, where he remained housed until the evening of December 16, 2001, when he left the facility. The defendant presented no evidence to show that Officer Honeycutt lacked the authority to arrest him or that his subsequent detention at the Claiborne County Jail was unlawful. We agree, therefore, that the proof was sufficient to establish beyond a reasonable doubt that the defendant was lawfully in custody, as defined by the escape statute, at the time of the offense.

Finally, the defendant argues that the State failed to prove that he was not entrapped into committing the offense. The defense of entrapment is codified at Tennessee Code Annotated section 39-11-505, which provides: "It is a defense to prosecution that law enforcement officials, acting either directly or through an agent, induced or persuaded an otherwise unwilling person to commit an unlawful act when the person was not predisposed to do so." Tennessee applies the subjective test for determining whether a defendant has been entrapped into committing a crime, which

requires the fact finder to focus on the subjective intent of the defendant to determine whether the defendant was predisposed to commit the criminal act, with law enforcement officials furnishing only the opportunity, or whether the defendant was an innocent person induced by police into committing the criminal offense.

State v. Shuck, 953 S.W.2d 662, 666 (Tenn. 1997) (citations omitted). The trial court must instruct the jury on the defense of entrapment when the defense has been fairly raised by the proof. State v. Blackmon, 78 S.W.3d 322, 331 (Tenn. Crim. App. 2001). In determining whether the defense has been fairly raised by the proof, the trial court must view the evidence, including all reasonable inferences flowing from the evidence, in the light most favorable to the defendant. Id. (citations omitted).

The defendant argues that the proof, which showed that he had attained the status of trustee and had not attempted to escape prior to December 16, 2001, demonstrates that he was not predisposed to commit the crime. He asserts that he was, instead, "persuaded or otherwise induced by law enforcement officers to exit the facility in violation" of the administrator's rule that he was not to leave the jail unless in the company of Burton Long. We respectfully disagree. Relevant factors to consider when determining whether a defendant was predisposed to commit a crime

include the character or reputation of the defendant, including any prior criminal record; whether the suggestion of the criminal activity was initially made by law enforcement officials; whether the defendant was engaged in the criminal activity for profit; whether the defendant evidenced reluctance to commit the offense which was overcome only by repeated inducement or persuasion by law enforcement officials or agents; the nature of inducement or persuasion engaged in by law enforcement officials; and any other direct or circumstantial evidence that the accused was ready and willing to engage in the illegal conduct in question. In determining predisposition a court or jury should consider the totality of the circumstances.

Shuck, 953 S.W.2d at 670 (citations omitted). The correctional officers may have violated the directive of the jail administrator by allowing the defendant to exit the building in order to help Inmate Washington carry trash to the dumpster. There was no evidence, however, that they suggested that the defendant use the opportunity to escape from the jail or attempted to persuade or induce him to do so in the face of his initial hesitation. The jury was instructed on the defense of entrapment but rejected it, as was its prerogative. We conclude, therefore, that the evidence was sufficient to sustain the defendant's conviction for felony escape from a penal institution.

II. Variance Between Indictment and Proof

The defendant next contends that a fatal variance existed between the indictment and the proof at trial. Specifically, he argues that the testimony about his January 31, 2002, recapture was irrelevant to the offense, which was alleged to have occurred on December 16, 2001, and that it created a material and prejudicial variance between the proof and the indictment. He asserts that the State "elected the exclusive theory regarding escape as 'unauthorized departure'" in the indictment while "simultaneously offering improper evidence of 'failing to return.'" According to his argument, there is a danger that the State could reindict and try him under a theory of his unauthorized departure "since the only basis of the State's conviction . . . relies on the alternative theory of 'failing to return.'" The State argues, *inter alia*, that the evidence at trial substantially corresponded to the charge presented in the indictment.

A variance arises when the proof presented at trial departs from the allegations in the indictment. State v. Keel, 882 S.W.2d 410, 416 (Tenn. Crim. App. 1994). Before a variance will be deemed fatal to a prosecution, it must be both material and prejudicial. State v. Moss, 662 S.W.2d 590, 592 (Tenn. 1984). In general, a variance between an indictment and the proof at trial

is not fatal if (1) the defendant is sufficiently informed of the charges levied against him so that he can adequately prepare for trial and, (2) the defendant is protected against a subsequent prosecution for the same offense based on double jeopardy grounds. The variance is not to be regarded as material when the indictment and proof substantially correspond. A material variance occurs only if the prosecutor has attempted to rely at the trial upon theories and evidence that were not fairly embraced in the allegations made in the indictment.

State v. Mayes, 854 S.W.2d 638, 640 (Tenn. 1993) (citations omitted). As long as the defendant is not misled at trial, any variance is not considered to be a basis for reversal. Johnson v. State, 596 S.W.2d 97, 103 (Tenn. Crim. App. 1979).

The indictment charged that the defendant

prior to the finding of this indictment, on or about December 16, 2001, in the County and State aforesaid, did unlawfully, feloniously, intentionally and knowingly escape from the Claiborne County Workhouse located in Claiborne County, Tennessee, having been lawfully detained there after being charged with the following felonies: theft of property over \$10,000 (2 counts), burglary (3 counts), vandalism over \$500,

theft over \$1,000, and vandalism over \$1,000, in violation of T.C.A. 39-16-605, all of which is against the peace and dignity of the State of Tennessee.

The indictment both informed the defendant of the precise charge he would be required to defend and protected him from subsequent prosecution for the same offense. As the State points out, the offense of escape includes *both* an unauthorized departure from custody and a failure to return to custody. These theories are not mutually exclusive, and the State was not required to “elect” which theory of the offense on which it intended to rely for a conviction. In State v. Campbell, 245 S.W.3d 331 (Tenn. 2008), our supreme court concluded that escape is a continuing offense:

We are persuaded that escape is a continuing offense under Tennessee Code Annotated section 39-16-601(3). The statutory language defining escape is broad, encompassing not only an “unauthorized departure from custody” but also a “failure to return to custody following temporary leave for a specific purpose or limited period.” Tenn. Code Ann. § 39-16-601(3) (2006). Nothing in the statutory definition provides a basis for determining that an escape ends once an inmate has left the physical boundaries of the prison or has eluded capture for a certain period of time. Thus, the statutory language, coupled with the ongoing danger inherent in an escape, lends credence to the proposition that the offense is continuing in nature.

Id. at 338 (citations omitted). “When the evidence does not establish that multiple offenses have been committed . . . the need to make an election never arises.” State v. Adams, 24 S.W.3d 289, 294 (Tenn. 2000) (discussing the fact that no election is required for a continuing offense because it is, by definition, a single offense). We conclude, therefore, that any variance between the indictment and the proof in this case was neither material nor prejudicial. Accordingly, the defendant is not entitled to relief on the basis of this claim.

III. Exclusion of Hearsay Testimony

The defendant next contends that the trial court erred by excluding, on the basis of hearsay, testimony from Correctional Officers Goode and Raines about whether each had overheard the other give the defendant permission to leave the jail. The defendant argues that such testimony constituted a nonhearsay operative fact that was not intended to prove the truth of the matter asserted but instead to support his defense theory of entrapment. The State argues, alternately, that the trial court properly excluded the testimony as hearsay, the proof did not show that either officer was in a position to have overheard conversation between the other and the defendant, and any error in excluding the testimony was harmless in light of the overwhelming evidence of the defendant’s guilt.

Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Tenn. R. Evid. 801(c). As a general rule, hearsay is not admissible at trial unless it falls under one of the exceptions to the rule against hearsay. Tenn. R. Evid. 802. The determination of whether a statement is hearsay lies within the sound discretion of the trial court, and we will not disturb its ruling absent a showing of an abuse of discretion. State v. Flood, 219 S.W.3d 307, 313 (Tenn. 2007).

We find no abuse of discretion in the trial court's exclusion of the testimony. This issue initially arose when defense counsel asked Officer Goode if he had overheard a conversation between the defendant and Officer Raines. The State objected, and the trial court inquired as to the direction that defense counsel intended to go with his line of questioning. Defense counsel responded that whether Officer Raines gave the defendant permission to leave was an admission of a party opponent as well as "a fact of independent legal significance as to permission" that did not rise to the level of hearsay. The trial court then sustained the State's objection, ruling that the proposed testimony was hearsay. The State raised another hearsay objection when defense counsel asked Officer Raines whether Officer Goode had given the defendant permission to leave the building. Defense counsel again argued that such testimony was a nonhearsay operative fact, but was unable to provide any case law in support of his argument despite being allowed a break in trial to research the issue. The trial court, therefore, sustained the objection.

Nonhearsay operative facts are described in Tennessee Law of Evidence as follows:

One of the more difficult, though infrequently encountered, categories of nonhearsay evidence encompasses operative facts, sometimes referred to as verbal acts. Operative facts are words that operate, by force of law, to cause legal consequences wholly apart from the truth or falsity of the words. Substantive law may make the utterance of words an event that causes a change in legal relationships, irrespective of the truth or falsity of the words or the credibility of the speaker. Such words are not hearsay by definition since they are not being used to prove their truth. Indeed, the truth or falsity of the words is irrelevant; what matters is that the words were uttered.

Neil P. Cohen et al., Tennessee Law of Evidence § 8.01[6][a] (5th ed. 2005). Examples of nonhearsay operative facts include the words "I accept," in the context of whether a contract was formed, and "I give you this," in the context of whether an object was a gift. Id. § 8.01[6][b], [c].

On appeal, the defendant cites two cases in support of his argument, both of which deal with rights acquired to land by prescription. In Brown v. Daly, 968 S.W.2d 814, 818 (Tenn. Ct. App. 1997), the court of appeals allowed testimony in a title by prescription case that a co-tenant gave another co-tenant permission to live on the property, writing: "Similarly, we hold that where a co-tenant is claiming title by prescription (which necessarily entails proof that his possession of the land was without the other co-tenants' permission), statements made by the other co-tenant(s) granting him permission to remain on the property are not inadmissible hearsay but have legal significance and effectuate legal consequences, in and of themselves, irrespective of their truth or falsity." In Johnny Nash and wife, Brenda Nash v. Robert Bryant and wife, Linda Bryant, No. 85-310-II, 1986 WL 5547, at *3 (Tenn. Ct. App. May 14, 1986), the court of appeals ruled that testimony by a prior owner of a servient estate, to the effect that her husband had told one of the users of an easement that he would probably allow the use of the land during his lifetime but that any continued use after his death would be left up to the family, was nonhearsay "offered to shed light on the question of permission and not to prove the truth of the matters contained in the statement."

The defendant argues that “[o]perative facts establishing that a person may remain somewhere is consistent with operative facts that a person may depart from a specified place.” We respectfully disagree that the above cases are analogous to the situation at bar. Statements by one or the other of the correctional officers giving the defendant permission to leave the jail do not constitute words “that operate, by force of law, to cause legal consequences wholly apart from the truth or falsity of the words.” That the defendant was given permission to leave the jail does not, for example, establish the defense of entrapment.

We further agree with the State that any error in excluding the testimony would be harmless. The State never disputed that the correctional officers allowed the defendant to carry out the trash, giving him, at a minimum, tacit permission by opening the door for him to leave. Officer Goode testified that he opened the door at the direction of Officer Raines, and Officer Raines testified that the defendant was allowed to carry out the trash after asking Officer Goode for permission. She said she did not overhear the conversation between the defendant and Officer Goode, but Officer Goode asked her if the defendant could carry out the trash and she responded that the other correctional officer with whom she worked had been allowing him to do so. We conclude, therefore, that the defendant is not entitled to relief on the basis of this claim.

IV. Sentencing

As his last issue, the defendant contends that the trial court erroneously ordered that his six-year escape sentence be served consecutively to the effective twenty-four-year sentence he received in case number 11969 instead of to the sentences he received in earlier cases for which he was on parole at the time of his “unlawful arrest . . . for [case number] 11969 by David Honeycutt.” He asserts that he was actually incarcerated on the basis of his parole violation, and not on the new charges in case number 11969, at the time of his escape. Pointing out that the defendant testified at the hearing on his motion for new trial that his parole was not revoked for the pre-11969 cases until July 2002, the State argues, *inter alia*, that the trial court appropriately ordered that the escape sentence be served consecutively to the sentences in case number 11969. We agree with the State.

When an accused challenges the length and manner of service of a sentence, it is the duty of this court to conduct a *de novo* review on the record “conducted with a presumption that the determinations made by the court from which the appeal is taken are correct.” Tenn. Code Ann. § 40-35-401(d). This presumption is “conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances.” State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

In conducting a *de novo* review of a sentence, this court must consider (a) any evidence received at the trial and/or sentencing hearing, (b) the presentence report, (c) the principles of sentencing, (d) the arguments of counsel relative to sentencing alternatives, (e) the nature and characteristics of the offense, (f) any mitigating or enhancement factors, (g) any statements made by the accused in his own behalf, and (h) the accused’s potential or lack of potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-103, -210; State v. Taylor, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001).

The party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Commission Cmts.; Ashby, 823 S.W.2d at 169. The defendant, therefore, has the burden of illustrating that the trial court erred in ordering that the escape sentence be served consecutively to the sentences he received in case number 11969.

The escape statute provides that “[a]ny sentence received for a violation of this section shall be ordered to be served consecutively to the sentence being served or sentence received for the charge for which the person was being held at the time of the escape.” Tenn. Code Ann. § 39-16-605(c). Here, the defendant has not met his burden of illustrating that the trial court erred in ordering that the escape sentence be served consecutively to the sentences in case number 11969, which reflected the sentences the defendant received for the felony charges which led to his September 18, 2001, arrest and subsequent incarceration in the county jail. We, therefore, conclude that the defendant is not entitled to relief on the basis of this issue.

CONCLUSION

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court.

ALAN E. GLENN, JUDGE